

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Duane L. O'Malley,

Case No. 20-cv-660 (ECT/TNL)

Plaintiff,

v.

**REPORT
AND RECOMMENDATION**

B. Birkholz, Warden,

Defendant.

By Order dated May 13, 2020, this Court directed Plaintiff Duane O'Malley to file a complaint setting forth his causes of action and a short and plain statement explaining why he is entitled to relief pursuant to Federal Rule of Civil Procedure 3. *See* Doc. No. 17. The Court warned Plaintiff that if he did not do so by June 2, 2020, the Court would recommend the matter be dismissed for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

That deadline has now passed, and Mr. O'Malley has not filed an amended complaint. Nor has he otherwise communicated with the Court regarding this action, other than to provide a new mailing address. *See* Doc. No. 15. Because this matter cannot proceed without a properly filed complaint, this Court recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

Several other individuals detained at the Federal Prison Camp at Duluth, Minnesota, have filed motions to intervene. *See* Doc. Nos. 4-14. Because the Court has recommended the underlying case be dismissed, the Court will recommend these motions be denied as moot. In recommending these motions be denied, the Court notes that any individual that sought intervention is free to consider initiating an individual action if they feel it is appropriate.

Therefore, based upon the foregoing, and on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED:**

1. That this action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute; and
2. That the motions to intervene (Doc. Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14) be **DENIED AS MOOT.**

Date: June 15, 2020

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those

objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).